

Law of Evidence and its Lacunas

IN simple language, if we look at the phrase Expert Opinion and try to analyse it, then it means that an opinion, which is given by a person who is expert in a particular field, may be science, art, law or any other technical field.

On a bare reading of section, we find that scheme of section has stressed on different types of experts like foreign law, science, art, fingerprints, handwriting etc. But, section does not have comprehensive approach because at the time of framing of Act these other branches of Science were not known also. So, the important point is the very meaning of the words "Expert" and "Opinion".

"Expert" means one who is skilled in any particular art or trade, profession being professed of particular knowledge, concerning the same. And if a person has acquired any special experience or special training in a particular subject to which court enquiry relates, such a person can be considered as an expert.

An expert is one who has made the subject upon which he speaks a matter of particular study; practice or observation and he must have a special knowledge of subject. Any person who has the experience to give an informed opinion on a matter outside the experience of Court is an Expert.

An "Opinion" is estimation, a belief or assessment, a view held as probable, what one thinks about a particular question or topic, an assessment short of grounds of proofs, a formal statement of reasons for the judgment, a formal statement of professional advice.

_Expert Opinion assists the Court in the matter of scientific nature. Expert gives opinion for the matter after assessing it. This opinion is not binding in nature and is merely advisory. Only an opinion is to be given and not a conclusion of matter by an expert. It should be of corroborative nature to facts and circumstances of the case. If opinion contradicts an unimpeachable eyewitness or documentary evidence then it will not have an upper hand over direct evidences. Expert opinion helps a Judge to form an independent opinion in every matter. Section of the Act does not provide for any specific attainment, study of experience for an expert. Experts are admissible as witness but they are not to make conclusion, as it is a judicial function. Experts have to state the facts, which he has seen, heard or perceived through his/ her sense. They are not helpful to Court in the interpretation of law. It is weak evidence.

To be appointed as expert one must have attainment in professional qualification. Some professional experience or should have made special study in subject. He must prove himself as an expert before Court. Some training must have been practiced by expert into that scientific field or has special knowledge of that field. Or, if he has made some observations in that field. Opinion is sought so that the court is able to assess evidence with a reasonable degree by relying on its own experience. But in some cases the Court is not able to come to a conclusion on the basis of its experience as because Court is ill equipped. And, for that opinion of an expert is being sought.

It is for Court to decide that if case partakes character of science or art and possessing knowledge of that specific subject is a must for that case to be adjudged

then expert opinion is to be sought. So when subject matter of court's inquiry is of such a scientific nature then the Court takes the Technical assistance in that field. Once the opinion is admitted by the court, then it is no more an Expert's opinion but the opinion of Court. And these opinions are not authoritative in value but they are persuasive.

These types of opinion involves various types of scientific areas like that of Foreign Law, Science, Art, Handwriting, Fingerprinting, Foot printing, Medical Science, Ballistic Expert, DNA Expert, Poristic Science, Lie Detectors and Truth Drugs etc. So in these kinds of Cases Court by itself is inefficient to answer the Technical questions. And moreover the presiding officer of the Court cannot be expected to keep knowledge of all the fields of science, as it is inhuman and impossible for anyone to keep knowledge with himself/ herself. In that way resorting to opinion of Experts is correct.

When there is a conflict between the opinion evidence and oral testimony of the evidence, then evidence can be assessed in two ways. The first method can be applied only in those cases where the oral evidence is above reproach and creates confidence and there is no false no appreciable reason for the false application of any accused. Where the evidence is not of that character and the opinion evidence is not open to any doubt or suspicion, the only safe and judicial method of assessing method is the second method.

Various rules for expert opinion are: The first rule is of Experts educational background. That means even the doctor is examined and is subjected to scrutiny and cross-examination. And if his opinion and observations contained in his statement are supported then the report can be looked at otherwise not. So even the examination of Doctor becomes essential. The second test is of the exhibits and the illustrations that the expert brings with him or makes. He should not base his opinion on the basis of memory and abbreviated notes. But he should have the opinion of such a level that even if there is an expert evidence of the opposite party then also he is able to defend his stand. The third test is of readiness to detail his techniques and procedures. As an expert should not be of skipful nature as to outlining his procedures that he has followed. And he should be so confident that no qualms can say that he has skipped procedures in reaching to his conclusions. And the conclusive test is that an Expert is conservative and is cautious. And phrases his conclusion that in all probabilities the offence was committed by the accused only.

It is a well-settled principle that the opinion of an Expert should be taken with a great caution and moreover the decision should not be based simply on the basis of the opinion of an Expert, without a substantial corroboration, as it is unsafe otherwise. Opinion of an Expert by its very nature, weak, and infirm and in itself cannot of itself form the basis for a conviction and should be taken with a great caution.

It is their duty of court not to occupy the role of an expert by themselves and S.C. has always deprecated the courts to take the role of an expert. But, before applying the opinion of an expert the court has to see to apply its own admitted or proved things and compare them with the disputed ones. And they have to verify the premises of the expert in one case and value the opinion in the other case.

When the direct evidence is well corroborated by the circumstantial evidence and conforms to probabilities, there is no reason why it should not be accepted. The mere fact that the expert has come to a different conclusion on a particular point would not render that part of his story open to doubt especially when the data on which the expert has come to that conclusion is insufficient. The data on which the expert weigh must weigh with the Court and the opinion of the expert must be judged in the light thereof.

Precincts Hitch of this expert opinion u/s.45 is that it is merely an advisory opinion. It is not conclusive piece of evidence. And moreover in case of conflict of expert opinion with eyewitness, latter is relied more by the court. Section does not envisage any guideline as to who can be termed as an expert? It merely defines areas in which opinion can be sought for by court of law. Section has not explained any definition of expert opinion. Neither the section is a comprehensive one. Section does not envisage as to how court of law will ensure that opinion of expert is not biased, or that expert is corrupt. Or that expert is not over zealous to prove the case of prosecution.

Counsel by author in this Article is that law on expert opinion is not comprehensive and moreover this opinion as "witness" is too weak to lead to conviction of accused. There should be stress on professional qualification of experts and not exclusively on experience. Some guidelines should be made to ensure the reliability of expert's opinion, his knowledge, experience, and qualification in that field in order to be termed as an expert. Section should be amended by Parliament in order to expand its meaning, explanation, comprehensiveness, and relevance.